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**Joseph E. Sucher & Sons, Inc. and International Union of Operating Engineers, Local 542, AFL-CIO. Case 4-CA-32861**

July 27, 2004

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, SCHAUMBER, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on March 2, 2004, the General Counsel issued the complaint on April 9, 2004, against Joseph E. Sucher & Sons, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On May 25, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On June 4, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by April 23, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated May 7, 2004, notified the Respondent that unless an answer was received by May 14, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Pennsylvania corporation with a facility at 1177 East 9th Street, Ed-dystone, Pennsylvania, (the facility) has been engaged as

a paving contractor in the building and construction industry.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Union of Operating Engineers, Local 542, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Joseph E. Sucher, the Respondent's president, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time equipment operators and equipment mechanics employed by Respondent at the facility, but excluding all other employees, laborers, drivers, guards and supervisors as defined in the Act.

On January 6, 2004, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since January 6, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since on or about January 12, 2004, the Union has requested that the Respondent meet and bargain with the Union concerning the wages, hours, and other terms and conditions of employment of the Unit.

Since on or about January 12, 2004, the Respondent has failed and refused to meet and bargain with the Union concerning the wages, hours, and other terms and conditions of employment of the unit.

On or about January 12, 2004, the Union, by letter, requested that the Respondent furnish the Union with the following information:

(a) A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and any records of discipline;

(b) A copy of all current company personnel policies, practices or procedures;

(c) A statement and description of all company personnel policies, practices or procedures that are not provided under letter b above;

(d) A copy of all company fringe benefit plans (including the plan document and summary plan description) including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees;

(e) Copies of all current job descriptions;

(f) Copies of any company wage or salary plans;

(g) Copies of all disciplinary notices, warnings, or records of disciplinary personnel actions for the last year; and

(h) A statement and description of all wage and salary plans that are not provided under letter f above.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about January 12, 2004, the Respondent has failed and refused to furnish the Union with the information requested.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing since on or about January 12, 2004, to meet and bargain with the Union, we shall order the Respondent, on request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB

226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

In addition, we shall order the Respondent to furnish the Union with the information it requested on or about January 12, 2004.

#### ORDER

The National Labor Relations Board orders that the Respondent, Joseph E. Sucher & Sons, Inc., Eddystone, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with the International Union of Operating Engineers, Local 542, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time equipment operators and equipment mechanics employed by Respondent at the facility, but excluding all other employees, laborers, drivers, guards and supervisors as defined in the Act.

(b) Failing and refusing to provide the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union the information it requested on or about January 12, 2004.

(c) Within 14 days after service by the Region, post at its facility in Eddystone, Pennsylvania, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 12, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 27, 2004

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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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Ronald Meisburg,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with the International Union of Operating Engineers, Local 542, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time equipment operators and equipment mechanics employed by us at our facility, but excluding all other employees, laborers, drivers, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

WE WILL furnish the Union the information it requested on or about January 12, 2004.

JOSEPH E. SUCHER & SONS, INC.